

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of

ELIZABETH STREET GARDEN, INC., RENEE GREEN,  
ELIZABETH STREET, INC., ELIZABETH FIREHOUSE  
LLC and ALLAN REIVER,

Petitioners,

Index No. 152341/2019

Hon. Debra A. James

For a Judgment Pursuant to Article 78 of the Civil Practice  
Law and Rules

-against-

**AFFIDAVIT OF HOWARD  
GOLDMAN IN SUPPORT  
OF PETITIONERS'  
AMENDED VERIFIED  
PETITION**

THE CITY OF NEW YORK, THE DEPARTMENT OF  
HOUSING PRESERVATION AND DEVELOPMENT,  
MARIA TORRES-SPRINGER, in her capacity as  
Commissioner of the Department of Housing Preservation and  
Development, THE NEW YORK CITY COUNCIL, and THE  
NEW YORK CITY PLANNING COMMISSION,

Respondents.

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STATE OF NEW YORK     )  
                                  ) ss.  
COUNTY OF NEW YORK    )

**PROFESSIONAL EXPERIENCE**

1. I began my career as a land use professional in Alaska in 1976, where I drafted regulations for the Alaska Coastal Management Program (“ACMP”), worked on the review of the ACMP under the National Environmental Policy Act, and represented towns and municipalities in developing zoning and land use controls for the coastal area. In 1980, I became the Deputy Counsel to the New York City Planning Commission (the “CPC”), where I advised the Chairman and Department of City Planning and was involved in the review of applications to the CPC , development of zoning amendments such as the Midtown Special District, and

coordination of the City Environmental Quality Review (“CEQR”) program. After City Planning, I was a land use partner at the Manhattan law firms Patterson, Belknap, Webb & Tyler and Winthrop Stimson Putnam & Roberts. In 1999, I founded the Law Offices of Howard Goldman, PLLC, continuing today as Goldman Harris LLC, with practice limited to zoning and land use in the five boroughs of New York City. I have authored numerous articles about zoning and environmental review, appeared as an expert witness in several cases, and am an Adjunct Professor at New York Law School where I teach a course in NYC Land Use Rules and Procedures.

### ZONING ANALYSIS

2. In my opinion, the Negative Declaration and Environmental Assessment Statement (“EAS”) in this case are affected by a fundamental error of law because their assessment of potential environmental impacts is based on a proposed building (the “Proposed Project”), depicted in in Figures A-2, A-3 and A-4 of Attachment A and Figures B-1 and B-2 of Attachment B to the EAS, that does not comply with the applicable provisions of the New York City Zoning Resolution (“Zoning Resolution” or “ZR”), as discussed below.

3. The Proposed Project is located in a C6-2 zoning district within the Preservation Area (Area A) of the Special Little Italy District (the “SLID”). Pursuant to ZR Section 109-02, the SLID modifies certain regulations of the underlying C6-2 district, including but not limited to the regulations governing the location of a building in relation to the adjoining street.

4. ZR Section 109-131 provides that “the front wall of any building shall extend along the full length of its front lot line not occupied by existing buildings to remain, and shall rise without setback up to a height of six stories or 65 feet, or the height of the building, whichever is less.” A front building wall is any wall of a building that faces a street. A front lot

line is the boundary between a lot and a street, including the sidewalk. In other words, under ZR Section 109-131, the wall of a new building must be built at the line of the sidewalk.

5. The requirement that a building be constructed at the front lot line is not uncommon in the Zoning Resolution. Its purpose is to maintain the existing character of certain neighborhoods, such as Little Italy, where many existing buildings have been constructed in this manner.

6. In the instant case, the development site has two front lot lines: one along Elizabeth Street and one along Mott Street. The Proposed Project does not comply with the front wall regulations of ZR Section 109-131 because, as depicted in the EAS, the front wall along Mott Street would be set back at least 60 feet from Mott Street and the area between the building wall and the sidewalk would be public open space.

7. In order to comply with ZR Section 109-131, a building or buildings must be constructed adjacent to the sidewalk on Mott Street, as well as the sidewalk on Elizabeth Street. This requires that open space, if provided, be located behind the building or buildings within the interior of the lot, and not along the sidewalk. This is a stark contrast to the scheme that was presented to the Community Board, Borough President, City Planning Commission and City Council.

8. The building and open space design shown in the EAS, upon which the Negative Declaration was based, could be developed only if an authorization to modify Section 109-131 was granted by the City Planning Commission under ZR Section 109-514. An authorization is a discretionary action that is subject to CEQR, review by the Community Board, and approval by the CPC. Once an application is filed, it is reviewed by the Department of City Planning for completeness. When deemed complete, including issuance of a Negative Declaration or a Draft

EIS, the application is presented to the CPC and referred to the Community Board for comment. The Community Board then typically refers the application to one or more of its committees, holds a public hearing, and adopts a written recommendation at a meeting of the full Community Board. The application is then calendared and voted on by the CPC at a public hearing. There is no fixed time period within which the authorization process must be completed and the CPC may approve, approve with conditions, or disapprove the application.

9. In addition, if the Court finds that the EAS and Negative Declaration were based upon the above-described error of law, I respectfully submit that the approval of the disposition of City-owned land under the Uniform Land Use Review Procedure should be voided because the public open space that would be provided by the Proposed Project was not correctly described, resulting in a failure to properly assess the environmental impacts of the project under CEQR and precluding informed public review and decision-making by the CPC and City Council.

Dated: August 15, 2019

  
Howard Goldman

Sworn to me this 15<sup>th</sup> day of August 2019

  
Notary Public

CAROLINE G. HARRIS  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02HA6232527  
Qualified in New York County  
My Commission Expires December 13, 2018 2022